

**STATE OF MICHIGAN
IN THE SUPREME COURT**

COSETTE ROWLAND, Personal
Representative of the Estate of
VIRGINIA KERMATH, deceased,

Supreme Court No. 161007
Court of Appeals No. 345650
LC Case No. 16-156377-NO

Plaintiff-Appellant,

v

INDEPENDENCE VILLAGE OF
OXFORD, LLC, d/b/a Independence Village
Of Waterstone; UNIFIED MANAGEMENT
SERVICES, LLC, d/b/a Senior Village
Management; and SENIOR VILLAGE
MANAGEMENT, LLC, d/b/a Independence
Village Management,

Defendants-Appellees.

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**AMICUS CURIAE BRIEF OF MICHIGAN ASSOCIATION FOR JUSTICE IN
SUPPORT OF APPLICATION FOR LEAVE TO APPEAL**

STATEMENT OF INTEREST

The Michigan Association for Justice (“MAJ”) is an organization of attorneys dedicated to promoting social justice. Many of our members represent those who have been injured or killed in preventable mishaps. In the courtrooms across this State, we are the voice of our clients, who often have no other public voice.

As members of Michigan’s bar, and as officers of the court, we recognize our responsibility to help the Court develop the State’s jurisprudence. It is our mission to assist the Court reach a wise result in cases which involve fields of law to which our members devote their professional lives.

Ordinarily, the MAJ focuses its Amicus Curiae energies on cases in which leave has already been granted. Occasionally, though, cases are presented on Application for Leave to Appeal which MAJ regards as particularly leave worthy. This is one of them. The parties have aptly reviewed the salient facts and legal precedents. If this Court grants leave, MAJ will be pleased to address the legal merits. For now, this Brief addresses only the reasons why leave to appeal should be granted.¹

¹ Counsel for a party did not author this Brief, nor did counsel or a party make a monetary contribution intended to fund the preparation or submission of this Brief.

THE REASONS WHY LEAVE TO APPEAL SHOULD BE GRANTED

1. The Importance of The Question In Today's World

Ours is an aging population. We get older. Every single day. The increased life expectancy during our lifetimes is reflected in the national cost of health care and in warnings about the future of social security. People live longer and can be more challenging to care for as their physical and mental health deteriorates.

The past decades have witnessed significant growth in the industry of caring for our aged. Yet there is virtually no legal authority on the relationship between unlicensed facility operators and residents. This is an unexplored area of law touching upon, at least potentially, every Michigan citizen with a relative in a senior care facility or who may themselves some day live there. This case presents the intersection of the English common law of torts with modern care for Michigan's senior citizens.

2. The Interesting Legal Issues

The Court of Appeals addressed two basic issues: foreseeability and duty. The two are closely related, as courts tend to recognize a "duty" to prevent foreseeable injury while the lack of foreseeability points to lack of duty.

The "foreseeability" analysis of the Court of Appeals seems to be at odds with scientific knowledge and common sense. For those with dementia, Alzheimer's disease, and other failings of the mind, the symptoms are increasingly obvious over time. The progression is well known. So is the tendency toward elopement. Can it really be "unforeseeable" that a woman with dementia might wander out of a senior facility?

The “duty” analysis also warrants consideration. One may fairly question whether a “special relationship” is required for a facility operator to be held accountable for negligence in the business it runs or the treatment of those who pay to use its facility. Or, what a “special relationship” really is, and whether the relationship between facility operator and senior with deteriorating mental faculties is one.

WHEREFORE, Amicus Curiae Michigan Association of Justice asks that this Honorable Court grant leave to appeal.

Respectfully Submitted,

MICHIGAN ASSOCIATION OF JUSTICE

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